IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 414 OF 2006.

Omprakash Gangaram Khanchandani. ... Appellant.
Versus.
Smt.Mukta Gopi Omprakash Khanchandani... Respondent.

Shri Sahil L.Kanuga for the Appellant.

CORAM : ABHAY S.OKA, J.

DATED : 17th April, 2006.

P.C.:

1. Heard the learned Advocate appearing for the appellant. The Appellant is the original Defendant-husband and the Respondent is the original Plaintiff-wife. A suit for maintenance was filed by the Respondent-wife which was dismissed by the trial Court. In an appeal preferred by the Respondent-wife, the Appellate Court has interfered and passed a decree for payment of maintenance in favour of the Respondent-wife in the sum of Rs.1000/- per month.

2. According to the case of the Respondent, the marriage between the Respondent and the Appellant was solemnized on 4th August 1991 in Gurudarbar at Ulhasnagar. According to the case of the Respondent at the time of the marriage, the Appellant was a widower having one daughter aged 16 years and whereas the Respondent was a spinster. According to the case of the Respondent as the Appellant was a widower, the marriage

was solemnised as per the custom prevailing in the Sindhi community. According to him as per the said custom for a marriage where one of the spouses is marrying for the second time, only three rounds are to be taken around Guru Granthsaheb and no mantras are chanted or no ceremony of saptapadi is held. The Respondent examined herself, her brother, her sister-in-law and a priest of the Sindhi community along with other witnesses. The trial Court dismissed the suit on the ground that the Respondent could not prove existence of a custom as pleaded by her. The Appellate Court found that the solemnisation of marriage was proved and therefore, the decree for maintenance was passed.

3. The learned Counsel appearing for the Appellant submitted that the trial Court has recorded a categorical finding that the existence of custom is not proved. He submitted that without dealing with the said finding and without upsetting the said finding of the trial Court, the Appellate Court jumped to the conclusion that the existence of the marriage was proved.

4. I have considered the submissions. The Appellate Court has relied upon an admission given by the Appellant in his evidence. In paragraph 18 of the

Judgment the Appellate Court held as under:

> ".....However, opponent did not adduce any evidence on record except his own statement. On the contrary he admitted that the appellant married to him at Gurusangat Darbar, Ulhasnagar 4 and further admitted that after marriage he started to reside with appellant in room No.1, B.No.290, situated at Ulhasnagar-2. Considering this aspect I conclude that the appellant succeeded to prove that she was validly married to opponent on 4.8.1998."

5. There is no challenge to this finding recorded by the Appellate Court. The Appellate Court has relied upon the admission of the appellant about solemnisation of marriage and of the fact that after marriage the Appellant and the respondent started residing together at Ulhasnagar. If this is the admission given by the Appellant himself no fault can be found with the finding recorded by the Appellate Court that the solemnisation of marriage between the Appellant and the Respondent has been duly proved. Such a finding of fact based on categorical admission of the Appellant cannot be interfered with in a Second Appeal under section 100 of the Code of Civil Procedure, 1908.

5. The Appellate Court has relied upon the income-tax returns of the Appellant for the years 1993-94, 1994-95 and 1995-96. After considering the income tax returns and after considering the case of the respondent, the income of the Appellant is found to be to the tune of Rs.8000/- to Rs.10000/-per month. There is no error in the approach of the Appellate Court of awarding maintenance of Rs.1000/- p.m.

6. No substantial question of law arises. The Second Appeal is dismissed with no order as to costs.

Judge.